

Bevans Review Questions

Chapter 1

An Introduction to Criminal Law

1. Can you make a case for relaxing the higher standard for a criminal case and bringing it more in line with the standard found in civil cases?

One way to make such a case is to say that with such a high standard as reasonable doubt it makes it harder for prosecutors to convict people who are guilty of crimes. Of course, the rejoinder to that argument would be that it shouldn't be easy to put people in jail and nobody ever said that a prosecutor's job was easy.

2. (Referring to Question #1) Is there some reason why this distinction should remain?

Under our system, a person is considered to be innocent unless and until he or she is proved to be guilty. That has been the bedrock of our criminal justice system since its founding and it has served us very well. Some might even argue that it is because of our legal system that we are the sole remaining super power. Our freedom gives our people the chance to aspire to the style of life that they cannot achieve in other countries.

3. Should the state government system be done away with? Is there any reason to continue to maintain separate state and federal government systems?

Student answers will vary according to their temperament and their experience with the criminal justice system. The practical response, however, is that the state system was created as a compromise between state's rights supporters and federalists after the collapse of the Articles of Confederation and history has shown that once power is delegated it is extremely difficult to get it back.

4. Should anyone accused of terrorism, especially where there is loss of life, be denied the same processes as people accused of other crimes? Why or why not?

This argument has been raised by many commentators, claiming that terrorists present a special threat to the very core of our society and that we cannot afford to treat them as we would normal criminals. They present an existential threat to the existence of the United States. On the other side, there is the argument that courts in this country hear cases on a wide variety of issues, including very delicate and highly classified issues, and yet our system handles them quite well. It was the state court system in Oklahoma, for instance, that tried Timothy McVeigh and eventually put him to death.

5. If you had to explain "proof beyond a reasonable doubt" to someone else, how would you describe it?

One way of doing it is by saying that when something is proven beyond a reasonable doubt, the person is not relieved of all doubt, but they are satisfied enough that they would make a major life decision based on the information that they had received.

Chapter 2

Arrest, Search and Seizure

1. In order to combat new issues raised by terrorism and organized crime, should the rules regarding arrests be made less rigid? Why or why not?

Student answers to this question will vary; they may point out that both of these groups present unique challenges to law enforcement. The flip side to that argument is that law enforcement and prosecutors have been dealing with such threats for decades, including the days of Prohibition when not only gangsters but also normal people routinely violated the law.

2. What kinds of rights does a person have after arrest that may not be available to him or her before arrest?

After arrest, a person has the right to a trial by jury, the right to remain silent and have no inference drawn from that silence, the right to be indicted by a grand jury for a felony (in states that follow that model), the right to an attorney, and numerous other rights.

3. Define “probable cause” without using any legal jargon. What does this term actually mean?

Probable cause simply means that police have a solid and specific reason to believe that a crime has occurred and that a particular person has committed that crime.

4. Why isn’t a so-called “Terry stop” actually an arrest?

Because a “Terry stop” qualifies as a brief detention, it does not rise to the level of a full-blown arrest and therefore does not have to be supported by probable cause.

5. Are the reasons for “Terry stops” still valid? Is there a continued need for brief, investigatory detentions?

Recent cases in New York City have questioned the utility of Terry stops, but they remain an everyday event across the United States. Changing the law would mean that there could only be two levels of interaction with police: voluntary encounters and full-blown arrests. The United States Supreme Court created Terry stops to deal with this gap and provide both citizens and police officers with some guidelines while police make a brief investigation.

Chapter 3

Post Arrest and Grand Jury

1. Is the grand jury really just a “rubber stamp” for the prosecution, or does it continue to serve an important role in society?

Student answers to this question will vary. Some defense attorneys have a saying that a prosecutor could get a grand jury to indict a “ham sandwich.” Whether that is true, the grand jury does serve an important function and the fact that they do not always do the prosecutor’s bidding shows that they do demonstrate some independence, although not as much as some scholars would like.

2. Explain the difference between the grand jury and the jury that votes verdicts in cases (sometimes called the petit jury).

A grand jury’s function is to determine if there is sufficient evidence to continue the case against the defendant. The grand jury does not determine verdicts and never votes on whether a defendant is guilty or not guilty. By contrast, a normal (or petit) jury’s specific purpose is to determine whether a person is guilty. They must review the facts and make a decision that the person is guilty beyond a reasonable doubt. Other than the fact that both bodies have the word “jury” in their title, they are radically different.

3. Is it not a violation of the Constitution to set a bail bond amount that the court knows the defendant cannot make?

According to the United States Supreme Court, the answer is no. In addition, a question should be addressed here. A judge’s responsibility is not only to the defendant, but also to the public at large and the victims in particular. By setting a high bond, the judge is not precluding the possibility that the defendant could be released prior to trial, but is simply making it more difficult for him or her to do so.

4. Should the procedural rules for preliminary hearings be tightened? For instance, should the state be forced to prove the defendant’s involvement in the crime beyond a reasonable doubt? Why or why not?

Students may have interesting responses to this question. Some will no doubt claim that the rules should be even more relaxed than they are, while others will say that they should be tightened up, if not to the level of a trial, at least to a higher standard than they are now.

5. Is there a legitimate reason why hearsay is permissible during preliminary hearings but not permissible at other court hearings?

The idea is that the purpose of the preliminary hearing is to determine that there is probable cause to hold the defendant. Because this hearing does not determine guilt and the results of the hearing will never be known to the jury, there is very little reason to alter the current evidentiary rules.

Chapter 4

Evidentiary Issues in Prosecution

1. Would it be a good idea to ask everyone in the United State to submit a DNA sample? Why or why not?

Student answers to this question will vary, but this would make a good in-class discussion about the rights of privacy vs. the ability of law enforcement to catch criminals.

2. Several studies suggest that people who commit minor crimes slowly build up to major crimes, often involving violence. Is this a good reason to require everyone convicted of an offense to submit a DNA sample?

Student answers to this question will vary, but one could argue that such a scheme would be a highly intrusive procedure that would in essence make everyone who committed any type of crime subject to providing a DNA sample. One might also argue what future ramifications might come with such information so readily available to state and federal authorities.

3. In most cases, evidence is destroyed once the defendant's appeals have been exhausted. Now that we have seen how new evidentiary techniques develop, is there an argument for keeping all evidence in all cases? If so, where would this mountain of evidence be stored? Who would pay for the storage?

Student answers to this question will vary, but a discussion should include increasing taxes to pay for this storage and the additional personnel that would be required to guard it. There would also be a question about just how long is too long to keep certain types of evidence.

4. Can you come up with an argument why the state would not wish to have evidence submitted to DNA analysis? For instance, suppose the evidence is only a small part of the overall evidence of the defendant's guilt?

Students might argue that there are some cases where DNA evidence is not relevant, such as DUI cases, shoplifting, and other minor offenses.

5. Polygraph machines have come a long way since they were first invented. Should the rule barring their use in criminal trials be re-evaluated? Why or why not?

Student answers to this question will vary, but it is important to note that such evidence is still not admissible in any court unless the defendant specifically stipulates to the admission and this usually only occurs when a person wishes to clear his or her name during the investigation part of the case.